



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Jim Earle
Crossroad Schools

From: Gina Spade, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: September 28, 2011

Re: DA 11-1588, released September 23, 2011

Please find accompanying this memo the Commission's decision on your request for review. The accompanying decision may be referenced in the future by its proceeding number and release date: DA 11-1588, September 23, 2011.

If the Commission has granted your request for review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached order, you will receive a revised funding commitment decision letter.

Before the
Federal Communications Commission
Washington, DC 20554

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|---|---|-------------------------------------|
| In the Matter of |) | |
| |) | |
| Requests for Waiver and Review of |) | |
| Decisions of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| All Saints Elementary School |) | File Nos. SLD-816848, <i>et al.</i> |
| Los Angeles, CA, <i>et al.</i> |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

ORDER

Adopted: September 23, 2011

Released: September 23, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we address 34 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2007, 2009, and 2011 under the E-rate program (formally known as the schools and libraries universal service support program).¹ Specifically, consistent with the Commission's *Academy of Math and Science Order*,² and based on our review of the record, we find that two petitioners filed their applications prior to the E-rate program's FCC Form 471 application filing window deadline and 24 other petitioners have demonstrated that special circumstances exist to justify a waiver of that filing window deadline. We grant those requests for waiver and remand the underlying applications to the Universal Service Administrative Company (USAC) for further action consistent with this order.³ We deny the remaining eight requests for waiver because we find that the

¹ The requests for waiver and review are listed in appendices A, B, C, and D. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

² See *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science Order*); *infra* para. 2; see also *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 16109 (Wireline Comp. Bur. 2010); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-768866, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011).

³ See appendices A, B and C; 47 C.F.R. § 54.507(c).

petitioners failed to present special circumstances to justify a waiver of the Commission's rules.⁴

2. Section 54.407(c) of the Commission's rules maintains that E-rate funds shall be available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received.⁵ As an initial matter, we grant two appeals after finding USAC mistakenly rejected the applications even though the schools filed their applications and required certifications before the FCC Form 471 application filing window deadline for funding years 2007 and 2009.⁶

3. Additionally, in the 2010 *Academy of Math and Science Order*, the Commission granted waivers of the FCC Form 471 application filing window deadline because the applicants filed their FCC Form 471 applications within 14 days of the FCC Form 471 application filing window deadline or presented other special circumstances justifying a waiver.⁷ Applying the standards of the *Academy of Math and Science Order* to the instant cases, we grant 24 requests seeking waivers of the FCC Form 471 application filing window deadline for funding year 2011.⁸ Specifically, we grant requests from: (1) 20 petitioners that filed their FCC Form 471 applications within 14 days after the filing window deadline closed;⁹ (2) two petitioners that timely filed their FCC Form 471 applications, but filed their associated certifications late;¹⁰ (3) one petitioner whose FCC Form 471 application was filed late because its E-rate staff person suffered a serious medical emergency,¹¹ and (4) one petitioner that was subject to a financial

⁴ See appendix D; 47 C.F.R. § 1.3.

⁵ See 47 C.F.R. § 54.507(c).

⁶ See appendix A; Darrouzett Independent School District; Little Lake City School District; *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 7.

⁷ See *Academy of Math and Science Order*, 25 FCC Rcd 9256.

⁸ See appendices B and C. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁹ See appendix B; *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹⁰ All Saints Elementary School filed its certification late due to a clerical error. See All Saints Elementary School Request for Review. Logan-Rogerville School District r-8 filed its certification late due to a technical glitch with USAC's electronic filing system. See Logan-Rogerville School District r-8 Request for Review. See also *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹¹ Boston Renaissance School. See *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8; *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15477-78, para. 8 (Wireline Comp. Bur. 2008).

reorganization by its city causing it to file its FCC Form 471 application late.¹² Moreover, at this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant the 26 petitioners' requests for review or waiver and remand the underlying applications listed in appendices A, B, and C to USAC for further action consistent with this order.¹³ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

4. We deny the remaining eight requests seeking waivers of the FCC Form 471 application filing window deadline for funding year 2011 because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules.¹⁴

5. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the requests for review or requests for waiver filed by the petitioners listed in appendices A, B, and C ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in appendix D ARE DENIED.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in appendices B and C to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹² Even though the City of Loganville transferred fiduciary responsibility for the O'Kelly Memorial Library's telecommunications services to the library itself in mid-March of 2011, the library still filed its application within 30 days of the application filing window deadline. See O'Kelly Memorial Library Request for Review. See *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Academy of Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 4747-48, para. 4 (at n.11) (Wireline Comp. Bur. 2007).

¹³ See appendices A, B, and C. In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

¹⁴ See appendix D; 47 C.F.R. § 54.507(c); *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13.

APPENDIX A

Requests Granted

(FCC Form 471 Applications Filed Before the Close of the Filing Window)

| Petitioner | Application Number | Funding Year | Date Request for Review/Waiver Filed |
|--|--------------------|--------------|--------------------------------------|
| Darrouzett Independent School District Darrouzett, TX | 685919 | 2009 | Mar. 8, 2010 |
| Little Lake City School District Santa Fe Springs, CA | 567790 | 2007 | Mar. 30, 2010 |

APPENDIX B

Requests Granted

(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

| Petitioner | Application Number(s) | Funding Year | Date Request for Review/Waiver Filed |
|---|--|--------------|--------------------------------------|
| Annunciation Elementary School Denver, CO | 821374 | 2011 | Aug. 11, 2011 |
| Brown County Educational Service Center Georgetown, OH | 800383 | 2011 | July 13, 2011 |
| Calvert County Public Schools Prince Frederick, MD | 821684 | 2011 | June 28, 2011 |
| Chambers County Library System Anahuac, TX | 800756 | 2011 | Aug. 8, 2011 |
| East Greenbush Community Library East Greenbush, NY | 803326 | 2011 | Aug. 1, 2011 |
| Guernsey County District Library Cambridge, OH | 821510 | 2011 | Aug. 11, 2011 |
| Karl Miles LeCompte Memorial Library Corydon, IA | 821479 | 2011 | Aug. 9, 2011 |
| Media-Upper Providence Free Library Media, PA | 821504 | 2011 | Aug. 22, 2011 |
| North Pointe Academy Highland Park, MI | 822033, 822035, 822036, 822037, 822038, 822039 | 2011 | Aug. 23, 2011 |
| Oaks Christian School Westlake Village, CA | 821946 | 2011 | Aug. 18, 2011 |
| Perry Central Community School Corp. Leopold, IN | 821852 | 2011 | Aug. 31, 2011 |
| Saint Mary's Springs High School Fond du Lac, WI | 821410 | 2011 | Aug. 8, 2011 |

| Petitioner | Application Number(s) | Funding Year | Date Request for Review/Waiver Filed |
|---|-----------------------------------|--------------|--------------------------------------|
| Salem City Public Schools Salem, VA | 821799 | 2011 | July 21, 2011 |
| Schulenburg Secondary School Schulenburg, TX | 822020 a/k/a 822445 | 2011 | July 28, 2011 |
| Seminole County School District Donalsonville, GA | 821880 | 2011 | Aug. 5, 2011 |
| Shekinah Learning Institute on behalf of Shekinah Radiance Charter School San Antonio, TX | 819799 | 2011 | July 27, 2011 |
| Spring Valley CC School District 99 Spring Valley, IL | 822245 | 2011 | Aug. 15, 2011 |
| Stafford County Public Schools Stafford, VA | 799919 | 2011 | Sept. 8, 2011 |
| Union County Library System Lewisburg, PA | 821878 | 2011 | Aug. 4, 2011 |
| The White Mountain School Bethlehem, NH | 821721, 821751, 821975, 821976 | 2011 | Aug. 18, 2011 |

APPENDIX C

Requests Granted

(Waivers Granted for Other Special Circumstances)

| Petitioner | Application Number | Funding Year | Date Request for Review/Waiver Filed |
|--|--------------------|--------------|--------------------------------------|
| All Saints Elementary School Los Angeles, CA | 816848 | 2011 | Aug. 24, 2011 |
| Boston Renaissance School Boston, MA | 794236 | 2011 | Aug. 1, 2011 |
| Logan-Rogersville School District r-8 Rogersville, MO | 776892 | 2011 | Aug. 16, 2011 |
| O'Kelly Memorial Library Loganville, GA | 822368 | 2011 | Aug. 5, 2011 |

APPENDIX D

Requests Denied

| Petitioner | Application Number | Funding Year | Date Request for Review/Waiver Filed |
|--|---------------------|--------------|--|
| Canton Public Library Canton, MI | 822725 | 2011 | Aug. 15, 2011 |
| Crossroad Schools Jacksonville, FL | 822527 | 2011 | Sept. 12, 2011 |
| El Paso Public Library El Paso, TX | Did not file | 2011 | July 25, 2011 |
| Gloucester City Library Gloucester City, NJ | 799205 a/k/a 822466 | 2011 | Aug. 9, 2011 supplemented on Sept. 7, 2011 |
| Leepertown Township Public Library Bureau, IL | 821854 | 2011 | Aug. 9, 2011 |
| Lower Kuskokwim School District Bethel, AK | Did not file | 2011 | July 27, 2011 |
| Mountain View Christian School Las Vegas, NV | 822054 | 2011 | Sept. 8, 2011 |
| SETA Head Start Sacramento, CA | 806378 | 2011 | Aug. 23, 2011 |